

discrepancy between the total number of hires over the license term that Dixie had represented to the Commission and the number that Dixie ought to have represented. (MMB Ex. 9).

57. Bramlett merely glanced at the January 2, 1992, inquiry letter when it arrived because he considered it to be a "rehash" of matters about which he and Marshall had already spoken. (Tr. 593). Bramlett also did not dwell on the correspondence or solicit help in understanding it fully because he did not fear that Dixie's license was in jeopardy. His mindset at the time was that errors had been committed and efforts must be made to develop the information that Marshall requested. (Tr. 596-597).

58. Thereafter, Bramlett determined that Dixie had 83 hires over the license term. This determination was based, in part, on the discovery of old payroll records which Dixie believed had been lost or destroyed. Although Marshall believed that there had to have been more than 20 total hires, she was surprised to learn that the number far exceeded 20. (Tr. 261-262). Van Horn advised Bramlett that the disclosure of the payroll records might have a serious negative impact on Dixie's renewal applications. (Dixie Ex. 1, p. 23; Tr. 737).

59. Marshall prepared Dixie's January 13, 1992, response. (MMB Ex. 10). She sent it to Bramlett for his review late in the afternoon on the day it was due to be filed. The only material



the 83 employees who were hired by Dixie over the license term. A copy was directed to Marshall. (MMB Ex. 18). Bramlett did not carefully read the letter when he received it because he had already spoken with Marshall about its contents. (Tr. 612).

62. Thereafter, on February 7, 1992, Dixie filed a voluminous response. The response consisted of a cover letter, two pages of text, several exhibits spanning more than 300 pages, and a supporting Statement signed by Bramlett under penalty of perjury. (MMB Ex. 11; Tr. 613). Bramlett merely glanced at the Statement before signing it and only looked at two pages of the exhibits before the response was filed. (Tr. 613). Among other things, the response claimed that Dixie had relied on the few records then available to support its prior "estimates" of new hires. (MMB Ex. 11, p. 2).

63. On February 11, 1992, Dixie filed revised exhibits to correct certain typographical errors. The February 1992 exhibits reveal that Dixie's list of 57 "non hires" include 21 persons identified as trainees. These persons worked in the professional, sales, and clerical categories. Most worked between one and two months, although one worked for four and one half months. The time periods and job categories of the "non hire" trainees do not noticeably differ from many of the persons listed as hires. (Compare MMB Ex. 12, pp. 5-6 with pp. 8-9).

#### H. Mitigation

64. Bramlett's reputation in the community of Decatur, Alabama, is one of honesty and integrity. (Dixie Ex. 11, p. 1; Tr. 699; Dixie Ex. 10, p. 1; Tr. 712; Dixie Ex. 19, p. 2).

65. Bramlett concedes that he made terrible mistakes by not carefully reading Commission inquiry letters or documents filed with the Commission on Dixie's behalf. (Dixie Ex. 1, p. 19, 32; Tr. 482, 608). He testified that he would not make the same mistakes in the future. (Tr. 563).

66. Since 1989, Dixie has been operating with a formalized EEO program modeled after the National Association of Broadcasters' "A Broadcasters EEO Handbook." (Dixie Ex. 1, p. 6; Dixie Ex. 5).

## Proposed Conclusions of Law

### EEO Program Issue

67. Section 73.2080(b) of the Commission's Rules requires each broadcast licensee to establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified minorities and women. E.g., Emmis FM Broadcasting Corporation of Boston, FCC 93-172, released March 31, 1993. To effectuate such a program, a licensee must, among other things, communicate its employment needs to sources of qualified applicants and solicit their recruitment assistance on a continuing basis. Section 73.2080(b)(3). A licensee must also conduct a continuing review of its employment practices and adopt positive recruitment measures to ensure genuine equality of opportunity. Section 73.2080(b)(5). These basic obligations have existed since 1970. See Nondiscrimination Employment Practices of Broadcast Licensees, 23 FCC 2d 430, 435 (1970).

68. The record evidence reveals that Dixie had approximately 104 license term hiring opportunities. The 104 hires consisted of 83 persons whom Dixie acknowledged hiring, plus 21 others who were hired as permanent employees but who did not survive the training or probationary period. Of the 104 persons hired, nine were Black. Seven of Dixie's Black hires

occurred during a 13 month period between August 1982 and  
September 1983, when one of its stations had an urban format.  
Nearly all of Dixie's Black referrals during this period occurred  
because of the efforts of Nathan Tate, Sr. who organized the urban



licensee's] obligations to the Commission, [may] be equivalent to an affirmative and deliberate intent.'" Golden Broadcasting Systems, Inc., 68 FCC 2d 1099, 1106 (1978), quoting Tipton County Broadcasters, 37 FCC 197, 291 (1963), aff'd, 37 FCC 191 (1964)."  
Standard Broadcasting, Inc., 7 FCC Rcd 8571, 8574, n.8 (Rev. Bd. 1992).

74. The record evidence firmly establishes that in five different written submissions between July, 1989 and February, 1992, Dixie either made false statements of fact or did not provide all the information requested by the Commission with respect to Dixie's affirmative action efforts during the 1982-1989 license term. First, in its July 28, 1989, response to the Commission's July 3, 1989, letter of inquiry, Dixie did not provide requested information with respect to all hires made by Dixie during a specified three year period. Rather, Dixie merely resubmitted its April 14, 1989, opposition pleading, thereby implying that the few hires noted in that pleading were the only ones which occurred during the three year inquiry period. Second, in its April 18, 1991, supplemental report, which was submitted in response to the Commission's March 15, 1991, letter of inquiry, Dixie falsely stated that, from 1982 through February 1989, its stations hired only approximately 20 persons, seven of whom were minorities. Third, in its October 15, 1991, response to a telephone inquiry from the Commission's staff, Dixie falsely ~~reaffirmed~~ that its stations had only 20 license term hires

Fourth, in responding to the Commission's January 2, 1992, letter, which, inter alia, requested an explanation for Dixie's prior misstatements about the number of license term hires by its stations, Dixie falsely implied that those misstatements occurred because of the prior unavailability of payroll records. Finally, in "supplementary materials" submitted by Dixie on February 7, 1992, Dixie again falsely attributed its repeated failures to provide the correct number of license term hires to the prior unavailability of payroll records.

75. In each of the instances noted above, there is no evidence that Dixie deliberately tried to mislead the Commission by submitting information which it knew to be false. There also does not appear to have been any motive for Dixie to lie to the Commission about its minority hiring record, because Dixie had, in fact, hired minorities at a rate approximating their presence in the local labor market.

76. Nevertheless, it is concluded that Dixie was grossly negligent in responding to official Commission inquiries. In this regard, J. Mack Bramlett never read any of the Commission inquiries thoroughly enough to learn what the Commission had requested. Moreover, he never read any of Dixie's responses in their entirety prior to filing them to assure that the factual

assertions therein were accurate, responsive and complete.<sup>11</sup> For all intents and purposes, Bramlett blindly authorized the filing of documents on Dixie's behalf without knowing their contents. While Bramlett may not have intended to misrepresent material facts to the Commission, he certainly intended for the Commission to rely on the information Dixie submitted. Indeed, documents were filed with the Commission that contained information that Bramlett knew at the time to be inaccurate. Incredibly, Bramlett simply did not know or care about the precise nature of the information in the documents. Thus, it necessarily follows that because Dixie's level of care was so utterly lax and its actions so wanton and reckless in responding to the Commission inquiries, the false statements that Dixie made to the Commission must be deemed the functional equivalent of intentional misrepresentations. Culpa lata dolo aequiparatur (gross negligence is equal to an intentional wrong). See Golden Broadcasting Systems, Inc.

77. Misrepresentations and lack of candor in an applicant's dealings with the Commission have traditionally been viewed as serious breaches of trust because the integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees. See Policy Regarding

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<sup>11</sup> That Dixie's inaccurate statements arose because Dixie's counsel incorrectly assumed certain facts and failed to solicit pertinent information from Bramlett partially explains but does not excuse Dixie's failures to provide accurate information.

Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1209-11 (1986) (subsequent history omitted) ("Character Policy Statement"). Thus, when an applicant is shown to have misrepresented facts or lacked candor with the Commission, the appropriate sanction is usually denial of the application. E.g., KOED, Inc., 5 FCC Rcd 1784 (1990), recon. denied, 6 FCC Rcd 625 (1991). This is so because the applicant's past failures to be honest with the Commission generally raise concerns about the applicant's ability to be truthful in any future dealings with the Commission. Character Policy Statement, 102 FCC 2d at 1209. However, even when misrepresentations have occurred, the Commission retains broad discretion in choosing appropriate remedies and sanctions. Character Policy Statement, 102 FCC 2d at 1211.

78. Considering all the circumstances of this case, the Bureau submits that the record evidence would permit disqualification of Dixie. However, given the matters noted at paragraphs 68 - 71 and 74 - 76 and the fact that there was no apparent motive to deceive the Commission, it is concluded that Dixie should receive a short-term renewal of its licenses for stations WHOS and WDRM(FM).

79. As noted, however, the HDO provided that if the hearing record showed that denial of Dixie's applications was not warranted, it was to be determined whether Dixie willfully or

repeatedly violated Section 73.1015 of the Commission's Rules, and, if so, to determine whether a forfeiture should be imposed. The HDO set \$50,000 as the maximum amount of the forfeiture. See HDO, 7 FCC Rcd at 5641.

80. In Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd 5339 (1992) ("Forfeiture Standards"), the Commission established standards for determining appropriate amounts for forfeitures arising from violations of the Commission's rules. The base forfeiture amounts are computed as a percentage of the statutory maximum for the service involved, and may be increased or decreased by applying adjustment criteria as relevant to the facts of the particular case.

81. Forfeiture Standards lists the base amount of the forfeiture for a single misrepresentation or lack of candor by a broadcaster as \$20,000. As established above, that because of its gross negligence, Dixie violated the lack of candor/misrepresentation rule, Section 73.1015 of the Commission's Rules, on four separate occasions within three years of the date of the release of the HDO. Thus, Dixie could have been liable for a forfeiture of \$80,000. However, because the HDO established a maximum forfeiture at the lesser amount of \$50,000, the Bureau submits that the amount of the forfeiture should be \$50,000.

### Ultimate Conclusion<sup>12</sup>

82. Dixie is qualified to remain as licensee of Stations WHOS and WDRM(FM). Accordingly, its license renewal applications for the stations should be granted. However, in view of Dixie's failures to comply fully with the Commission's EEO rules and its repeated failures to comply with Section 73.1015 of the Commission's Rules, the grant of Dixie's renewal applications should be for a short term ending January 1, 1995, and the grant should be subject to the submission of standard EEO reports. In addition, a forfeiture of \$50,000 is warranted. The EEO reports should be submitted on September 1, 1993 and September 1, 1994 (the latter report with the stations' next renewal applications) with regard to reporting dates of August 1, 1993 and August 1, 1994, respectively, and should include the following:

- (a) For each report, two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. The list should

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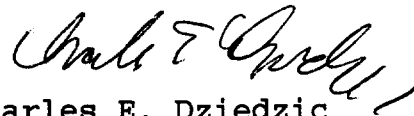
<sup>12</sup> All of the sanctions recommended by the Bureau have been agreed to by Dixie.

also note which recruitment sources were contacted;<sup>13</sup>

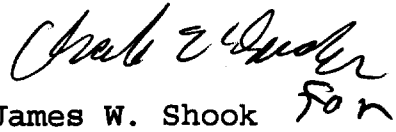
(b) a list of employees as of the August 1 1993

relevant regarding the stations' EEO performance and its efforts thereunder.

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April 30, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on the 30th day of April, 1993, sent by regular United States mail, U.S. Government frank, a copy of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to:

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